IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 15281 of 2004

Between:

Dr.Aluru Veerabhadra Rao, S/o late Aluri Ankineedu,
R/o Lenia 193, Harrison Street, New Jersy, USA rep. through his G.P.A.Holder Aluri Balaji, S/o Late Nageswara Ra
aged about 38 years, R/o H.No.49-1-1/4, Balaji Bhavan, Laxminagar,
Mogalrajpuram Road, Vijayawada

..... PETITIONER

AND

1 Gadde Narendra Babu, S/o Venkat Subba Rao,
R/o Door No.54-20/6/3, Subodaya Apartments, Srinagar Colony,

Vijayawada, Krishna District.
2 Smt.Kothapalli Sudha, W/o K.Vijayakumar,
R/o Edupugallu Village, Kankipadu Mandal, Vijayawada,
Krishna District
3 Kothapalli Kusuma Kumari, W/o Venkata Subbaiah,
R/o Edupugallu Village, Kankipadu Mandal, Vijayawada,
Krishna District
4 Smt.Tatineni Baby Sarojani, W/o Late Nageswara Rao,
R/o H.No.32-35-50, Jamindar Street, Machavaram, Vijayawada,
Krishna District
5 Tatineni Veera Venkata Krishna, S/o late Nageswara Rao,
R/o H.No.32-35-50, Jamindar Street, Machavaram, Vijayawada,
Krishna District
6 Tatineni Ramaswamy Chowdary, S/o Late Nageswara Rao,
R/o H.No.32-35-50, Jamindar Street, Machavaram, Vijayawada,

Krishna District

7 Tatineni Venkateswara Rao, S/o Late Nageswara Rao,
R/o H.No.32-35-50, Jamindar Street, Machavaram, Vijayawada,
Krishna District

8 Tatineni Siva Kumar, S/o Late Nageswara Rao,
R/o H.No.32-35-50, Jamindar Street, Machavaram, Vijayawada,
Krishna District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records and issue writ or direction, more particularly one in the nature of Certiorari and quash the order dated 5-5-2004 in I.A.No. 256 of 2004 in L.G.C. 59 of 2000.

Counsel for the Petitioner:MR.P.SURESH

Counsel for the Respondent Nos: MR.M.V.DURGA PRASAD

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

We have heard the counsel for the parties.

Challenge in this writ petition is to the order passed by the Special Court, Hyderabad under the Land Grabbing (Prohibition) Act (for short "the Act"). Impugned order rejects the application of the petitioner filed under Order VI Rule 17 of the

Code of Civil Procedure seeking amendment to the main petition filed under the Act.

Application seeking amendment in I.A.No.256 of 2004 was filed in the name of Aluru Balaji, the duly constituted attorney of the petitioner-applicant. The grounds urged were that the land grabbing case was filed by the applicant, who, at the relevant time, stayed at USA and the deponent had signed and verified the pleadings of the application on behalf of the petitioner as his power of attorney. At the time of giving instructions to the counsel, he had prepared sketch showing how one K.B.S.Kumar has plotted the lands and executed sale deeds without the authority of the petitioner. The sketch was given for the information of the counsel but inadvertently the sketch was not only annexed to the petition before the Special Court but also boundaries were given in column No.12 of the petition as per the rough sketch. The deponent however states that none of the sale deeds executed by K.B.S.Kumar on 5-3-1991 including those executed in favour of the kith and kin of the petitioner was under authority of the applicant. The mistake was noticed only when P.W.2 (the petitioner) was under cross-examination, more especially when the sketch plan was confronted to him. The deponent further states that the petitioner disputed the correctness of the boundaries given in the schedule and also in the sketch plan. Thus amendment was sought to amend the boundaries of the application schedule land given in column 12 of the petition before the Special Court and also sketch plan.

The application was opposed on the ground that it was not filed bona fide and the allegations made in the application were not correct. The respondents mentioned in detail about the earlier pleadings and also the boundaries and that P.W.2 while appearing in witness box had admitted the correctness of the land grabbing petition as also the schedule. Therefore, there were admissions with regard to boundaries, which clinchingly falsify the case of the applicant that amendment deserves to be allowed. It is also pointed out that P.W.2 was under cross-examination from 10-2-2004 to 24-2-2004 and when his cross-examination concluded, he left for USA. During his cross examination on 17-2-2004, P.W.2 admitted that boundaries mentioned in the petition are correct. There was no request for further re-examination and the present application has been filed after the evidence was closed and no further evidence was forthcoming on behalf of the applicant. Therefore, the application is mala fide.

The Special Court after referring to the earlier pleadings and the evidence

recorded so far concluded that P.W.2 was recalled and cross-examined on 24-2-2004 and 26-2-2004 and the case was adjourned for further evidence and on 1st March, 2004 it was stated that there was no further evidence but application seeking amendment was filed and since the application has been filed when no other evidence is forthcoming, it was not a bona fide act on the part of the applicant seeking amendment. Another ground on which the application is rejected is that the petitioner filed the land grabbing case stating the boundaries of the application schedule property. He was aware of the boundaries of the application schedule property but no reason was forthcoming why amendment was sought. The application was not dismissed on the ground that there are some admissions made by the petitioner or that by way of amendment, admissions cannot be permitted to be changed.

Learned counsel for the respondents vehemently opposed the submissions made by the petitioner's counsel and took us through the evidence of P.W.2 stating that P.W.2 while appearing in witness box had admitted the contents of the petition to be correct including the schedule attached thereto. But on the other hand, it was pointed out, when P.W.2 was under cross-examination, the sketch Ex.A.2 was shown to him and he denied the correctness thereof.

Admittedly, this sketch is not signed by the petitioner or his power of attorney; it is signed by the advocate. It is the case of the petitioner and also the deponent, who has supported the application seeking amendment, that it was the deponent who had handedover the papers to the advocate along with the rough sketch, which was not meant to be attached to the petition before the Special Court. However, the same was annexed to the petition. But only when P.W.2 was under cross-examination, he realized the mistake in describing the property in the schedule on the basis of the rough sketch, which was not correct. The learned counsel for the respondents is unable to show us any clear or unequivocal admission on the part of the petitioner that at any earlier point of time, he had admitted the boundaries to be correct as described in the sketch and schedule attached to the case before the Special Court. Rather, in the cross examination, he clearly stated that Ex.A.2 is not correct.

At the stage when the court is required to examine whether amendment should or should not be allowed, a liberal approach deserves to be adopted. The

Special Court ought to have concentrated itself on the question whether by carrying out amendment, petitioner was trying to change the very nature of the case before it. It was not the ground on which application was rejected. It was also not the ground, which was taken by the respondents. The nature of the relief sought by the petitioner remains the same even if the amendment is allowed. The petitioner is not seeking to add any additional relief. Relief remained the same. At the most, it can be said to be a different approach by the petitioner for the relief, which has been prayed for. There is no admission on the part of the petitioner as regards boundaries described in the sketch. May be that application was filed belatedly and that is not shown to be mala fide. Why the petitioner would be interested in dragging on his proceedings is not demonstrated when his case was that it was a matter of land grabbing and he was entitled to possession of the land unlawfully grabbed by the respondents. No mala fides could be imputed to the petitioner. The Special Court failed to exercise jurisdiction vested in it by law in a proper manner and rejected the application, which ought to have been allowed. The impugned order cannot be sustained in law.

Accordingly, the writ petition is allowed, impugned order is set aside and I.A. No.256 of 2004 filed by the petitioner is allowed. Special Court will proceed with the petition in accordance with law after permitting the petitioner to amend the petition. It is made clear that observations made by us in this judgment will not come in the way of the Special Court in disposing of the case before it on merits.

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DEVINDER GUPTA, CJ

26-8-2004

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C.V.RAMULU, J

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